

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WHITE PLAINS HOUSING AUTHORITY

Plaintiff,

-against-

GETTY PROPERTIES CORPORATION,
TYREE ENVIRONMENTAL CORPORATION,
SINGER REAL ESTATE GROUP LLC,
MICHAEL C. KENNY,
KENNETH C. SEUS,

Defendants.

Case No. 13-CV-6282 (NSR)

GETTY PROPERTIES CORPORATION,
TYREE ENVIRONMENTAL CORPORATION,
MICHAEL C. KENNY, and KENNETH C.
SEUS,

Third-Party Plaintiffs,

-against-

MARIANINA OIL CORP.

Third-Party Defendant.

STIPULATION & ORDER
OF DISMISSAL

^
PARTIAL

Whereas this action was commenced on September 6, 2013; and

Whereas this action seeks recovery for damages to plaintiff's property allegedly caused by the discharge of petroleum products from a former adjacent Getty service station located at 26 East Post Road, White Plains, New York ("the former Getty station"); and

Whereas plaintiff White Plains Housing Authority ("WPHA") filed a Third Amended Complaint on August 14, 2015; and

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DATE FILED: 6/17/2016

Whereas defendant Singer Real Estate Group LLC (“Singer”), which is the current owner of the former Getty station, filed its Answer to the Third Amended Complaint on September 11, 2015 asserting, among other things, cross-claims against defendants Getty Properties Corporation, Tyree Environmental Corporation, Michael C. Kenny and Kenneth C. Seus (the “Getty Defendants”) and against third-party defendant Marianina Oil Cop.; and

Whereas the Getty Defendants filed their Answer to the Third Amended Complaint on September 14, 2015 asserting, among other things, cross-claims against defendant Singer; and

Whereas a final judgement by default in favor of the WPHA as to third-party defendant Marianina Oil Corp. was ordered on December 1, 2015; and

Whereas all parties remaining in this action have reached an agreement to settle all claims by WPHA against Singer, by the Getty Defendants against Singer, by Singer against Marianina, and by Singer against the Getty Defendants, as set forth below;

Whereas, following the date this Stipulation is so ordered by the Court, the Getty Defendants agree, inter se with Singer, to diligently pursue the investigation and remediation of Spill No. 9713110 consistent with the requirements of the New York State Department of Environmental Conservation (“DEC”) until such time as the DEC closes Spill No. 9713110 and/or issues one or more of the Getty Defendants a no further action letter or equivalent;

Whereas Singer’s and the Getty Defendants’ mutual dismissal, with prejudice, of their respective cross-claims against each other shall not in any way bar or diminish Singer’s ability to bring a future claim against the Getty Defendants for failure to diligently pursue the investigation and remediation of Spill No. 9713110 consistent with DEC requirements until such time as the DEC closes Spill No. 9713110 and/or issues one or more of the Getty Defendants a no further action letter or equivalent;

Whereas, the Getty Defendants and Singer are persons liable or claimed to be liable for the injuries claimed by WPHA and, as such, it is the intention of the parties that this stipulation constitutes a release of the claims asserted by WPHA against Singer such that the amount of the claims by WPHA against the Getty Defendants is reduced pursuant to GOL § 15-108 by the amount of the consideration paid for the release (\$700,000) or the amount of Singer's equitable share of the damages (including attorney's fees) pursuant to article fourteen of the CPLR, whichever is the greater; and

Whereas, pursuant to GOL §15-108 (c), Singer shall not be entitled to contribution from the Getty Defendants or any other party to this action.

Now therefore the parties agree, and the Court Orders, that:

1. Pursuant to Fed. R. Civ. P. Section 41(a)(2)

A. All claims by the WPHA against Singer, all cross-claims by the Getty Defendants against Singer, and by Singer against third-party defendant Marianina are hereby dismissed with prejudice and without costs; and ✓

B. All cross-claims by Singer against the Getty Defendants are hereby dismissed with prejudice and without costs; ✓

2. From and after the date of this Stipulation, the Getty Defendants agree with Singer inter se that the Getty Defendants shall diligently pursue the investigation and remediation of Spill No. 9713110 consistent with DEC requirements until such time as the DEC closes Spill No. 9713110 and/or issues one or more of the Getty Defendants a no further action letter or equivalent;

3 Nothing herein shall in any way bar or diminish Singer's ability to bring a future claim for damages and/or injunctive relief against the Getty Defendants for failure,

following the date this Stipulation is so ordered by the Court, to diligently pursue the investigation and remediation of Spill No. 9713110 consistent with DEC requirements until such time as the DEC closes Spill No. 9713110 and/or issues one or more of the Getty Defendants a no further action letter or equivalent.

4. This action by the WPHA against the Getty Defendants shall continue and not be affected (a) by the terms of the agreements inter se between Singer and the Getty Defendants set forth above or (b) by the terms of the dismissal of the claims set forth above, except that the amount of the claims by plaintiff against the Getty Defendants is reduced by the amount of the consideration paid for the release of the claims against Singer (\$700,000) or in the amount of Singer's equitable share of the damages (including attorney's fees) under article fourteen of the CPLR, whichever is the greater.
5. This Court retains jurisdiction of this action for all purposes.

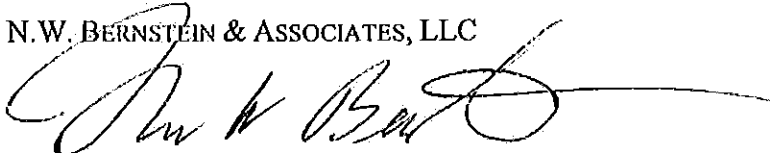
~~Dated: _____ 2016~~
~~White Plains, New York~~

~~SO ORDERED:~~

~~Nelson S. Román, U.S.D.J.~~

Consented To:

N.W. BERNSTEIN & ASSOCIATES, LLC

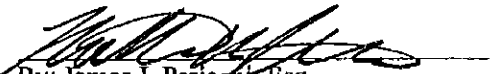


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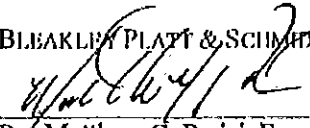
Dated: 6/16/16
Rye Brook, New York

PERICONI, LLC


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Counsel for Defendant Singer Real Estate Group LLC


Dated: 6/16/16
New York, New York

BLEAKLEY PLATT & SCHMIDT, LLP


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*Counsel for Defendants Getty Properties Corporation,
Tyree Environmental Corporation, Michael C. Kenny and
Kenneth C. Seus*

Dated: 6/16/16
White Plains, New York

SO ORDERED:



U.S.D.J. / U.S.M.J.

Dated: June 17, 2016 White Plains, New York